No. 679

IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

CECIL B. DEMILLE, *Petitioner*,

v.

AMERICAN FEDERATION OF RADIO ARTISTS,
Los Angeles Local, etc., et al.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA.

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Petitioner respectfully prays that a writ of certiorari issue to review a final judgment of the Supreme Court of California affirming a judgment of the District Court of Appeal, which in turn affirmed a judgment of the Superior Court for Los Angeles County, sustaining a demurrer to the complaint, without leave to amend, and dismissing the complaint.

Opinions Below.

The opinion of the Superior Court for Los Angeles County (R. 105-113) is unreported. The opinion of the

California District Court of Appeal (R. 144-150) is reported in 77 Advance California Appellate Reports 480, 175 Pac. (2d) 851. The opinion of the Supreme Court of California (R. 155-171) is reported in 31 Advance California Reports 137, 187 Pac. (2d) 769.

Jurisdiction.

The judgment of the Supreme Court of California (the highest Court of that State) was entered December 16, 1947 (R. 155). The Federal questions here presented were urged in the Court below (R. 114, 117, 127, 129-138, 141-143) where they were overruled (R. 162, 163, 168, 169, 170-171). The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code as amended.

Questions Presented.

1. Whether the State of California deprived petitioner of his right to work and abridged his freedom of speech, in violation of the First and Fourteenth Amendments to the Constitution, in sustaining the action of a labor union, which has a monopoly in its industry, forfeiting petitioner's membership privileges and thereby his job, for refusal to pay a special assessment to finance the union's campaign against a proposed amendment to the California Constitution, which petitioner desired to support.

2. Whether Section 251 of the Federal Corrupt Practices Act prohibited the contribution by respondent labor union "in connection with" a general election at which candidates for Federal office as well as the proposed amendment to the California Constitution were submitted to the electorate.

Statute Involved.

The relevant provisions of the Federal Corrupt Practices Act (2 U.S.C. Sec. 251 as amended June 25, 1943) are set out in the Appendix, *infra*.

Statement.

Petitioner, plaintiff below, had been gainfully employed in the production of a nation-wide radio program since 1936 (R. 2-3), and after February 13, 1939, was a member of respondent American Federation of Radio Artists, Los Angeles Local (R. 2). American Federation of Radio Artists (hereinafter referred to as AFRA) at all material times was an unincorporated labor union of radio entertainers and performers, affiliated with the American Federation of Labor (R. 1, 155). AFRA has collective bargaining contracts, providing for a union shop, with all employers of radio artists and performers, with the result that only members of AFRA can be engaged to perform on or to produce radio programs (R. 2-3, 155-156).

In the general election of 1944, at which national Presidential and Vice-Presidential electors, a United States Senator and Representatives to Congress were voted on, the ballot in California listed also a proposed amendment to Article I of the California Constitution denominated as Proposition No. 12 (R. 93, 156). The proposal purported to outlaw the closed or union shop, and provided in part as follows:

> "Every person has the right to work, and to seek, obtain and hold employment, without interference with or impairment or infringement of said right because he does or does not belong to or pay money to a labor organization" (R. 156).

Proposition No. 12 was an important political issue in the campaign in California preceding the 1944 general election (R. 79, 89, 93).

On July 17, 1944, respondent AFRA Local adopted a resolution to join in the campaign against Proposition No. 12 (R. 70). At the same time, respondent union adopted also a resolution to the effect that participation in any radio program which would publicize the amendment on

behalf of its proponents, would constitute conduct unbecoming a member.

Article V of the by-laws of respondent AFRA Local provides in part:

> "... any member who shall be guilty of an act, omission, or conduct which is prejudicial to the welfare of the Local, ... or which, in the opinion of the Board, is prejudicial to its welfare, interest or character, ... may in the discretion of the Local Board be either censured, suspended, expelled from membership, or such membership may be otherwise terminated, or his resignation may be required, or he may be fined, or otherwise punished" (R. 29).

On August 16, 1944, petitioner received a notice from respondent purporting to assess each member of the local "a minimum of $1.00 to finance the campaign in opposition to Proposition No. 12" (R. 4). The notice specifically stated that failure to pay the assessment would result in suspension (R. 57).

Petitioner was in favor of, and desired to support the proposed constitutional amendment. He therefore did not pay the assessment (R. 94, 157).

On November 7, 1944, at the general election, Proposition No. 12 was defeated (R. 157).

On November 21, 1944, petitioner was notified by respondent union that due to his failure to pay the assessment for the purpose of defeating Proposition No. 12 at the polls, he was delinquent under Article VI [1] of the by-laws, and unless he paid in full by December 1, 1944, he would be suspended (R. 4, 57-58). On December 5th petitioner received another notice stating that if he did not pay the assessment by December 11, 1944, his suspension would automatically become effective on that date (R. 4, 58).

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[1] Article VI is entitled "Initiation Fees and Dues", and provides in Section 3 that "failure of any member to pay the Local any dues or other payments" renders the member delinquent and subject to suspension (R. 31, 32).

On December 7, 1944, petitioner brought this action to enjoin respondent union from suspending or expelling him or from preventing him in any way from performing his services over the air (R. 1-8).

After a hearing on December 15, 1944, the Superior Court for Los Angeles County sustained respondent's demurrer without leave to amend the complaint, and dismissed the complaint (R. 64-65). Petitioner appealed to the District Court of Appeal, and that Court on December 30, 1946, affirmed the judgment of the Superior Court (R. 144). On petition, the Supreme Court of California granted a hearing, but on December 16, 1947, the judgment below was affirmed (R. 155).

The Decision Below: Petitioner urged the following points upon the Supreme Court of California:

1. AFRA had no power or authority to levy the assessment, under its constitution or by-laws (R. 120-127).

2. Petitioner was denied due process of law because he was suspended without a hearing and without notice (R. 127-129).

3. The levy of the assessment and the consequent suspension for non-payment infringed upon petitioner's constitutional rights of suffrage, freedom of speech, press and assembly in violation of the California and Federal Constitutions (R. 129-136).

4. The levy of the assessment and the consequent suspension for non-payment deprived petitioner of his right to work in violation of the Fifth and Fourteenth Amendments to the Federal Constitution (R. 133).

5. Respondent union's money contribution to defeat Proposition No. 12 was prohibited by the Federal Corrupt Practices Act (2 U.S.C. Sec. 251, as amended), and the assessment and consequent suspension for failure to pay were therefore void (R. 136-138).

The Supreme Court of California specifically overruled petitioner's contentions on each of these points (R. 158-162, 169, 162-168, 168-169, 170-171). In order to deny him the relief he sought, a decision on each point was necessary.

Specification of Errors to be Urged.

The Supreme Court of California erred:

1. In failing and refusing to hold that respondent's suspension of petitioner for failure to pay a political assessment, thereby preventing him from working, deprived him of liberty and property without due process of law, in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

2. In failing and refusing to hold that respondent's suspension of petitioner for failure to pay a political assessment, thereby preventing him from working, abridged petitioner's freedom of speech, in violation of the First and Fourteenth Amendments to the Constitution of the United States.

3. In failing and refusing to hold that respondent union's money contribution to defeat the proposed amendment to the California Constitution at a general election was in violation of Section 251 of the Federal Corrupt Practices Act and that the assessment and subsequent suspension for non-payment were therefore void.

4. In affirming the judgment of the District Court of Appeal and of the Superior Court.

Reasons for Granting the Writ.

This case presents, for the first time in this Court, the vital question: Can a labor union which, by virtue of industry-wide union shop contracts, has an industry-wide monopoly of labor, impose a condition upon membership —and therefore upon the right to work—a forfeiture of an individual's basic civil liberties? Granted that a closed

shop is lawful, nevertheless, because by hypothesis membership in a union operating thereunder is a prerequisite to the right to work—a right protected by the Fourteenth Amendment—such a union may not condition membership upon forfeiture of another basic constitutional right—the freedom of speech.

The facts of this case constitute the shaping of a dilemma. Petitioner was faced with a Hobson's choice. In effect respondent union said: "Either you pay your money to finance a fight to the finish against Proposition No. 12—in spite of the fact that you believe in and want to support Proposition No. 12—or you lose your job, because we will suspend you from the union. Furthermore, any public utterance you may make in support of Proposition No. 12 may be regarded by us as conduct prejudicial to the welfare of the union, punishable by expulsion or suspension and consequent loss of your job."

Petitioner was thus faced with loss of the right to work or a clear limitation on his freedom of speech. He was required either to subsidize an agent to speak against petitioner's own political views—or forfeit his job.

Petitioner refused to pay the assessment and, facing imminent suspension, brought this action.

I.

THE JUDGMENT OF THE SUPREME COURT OF CALIFORNIA IN SUSTAINING THE SUSPENSION OF PETITIONER BY RESPONDENT UNION FOR NON-PAYMENT OF THE SPECIAL ASSESSMENT, LEVIED FOR THE EXPRESS PURPOSE OF COMBATING AT THE POLLS A PROPOSED AMENDMENT TO THE CALIFORNIA CONSTITUTION, WHICH PETITIONER DESIRED TO SUPPORT, CONSTITUTED A DEPRIVATION BY THE STATE OF CALIFORNIA OF PETITIONER'S LIBERTY AND PROPERTY, AND AN ABRIDGEMENT OF HIS FREEDOM OF SPEECH IN VIOLATION OF THE FIRST AND FOURTEENTH AMENDMENTS.

Basically, the question here presented is whether or not a labor union with a monopoly in its industry can subject a member, as a condition of continued membership—and therefore of his right to work—to a limitation of his freedom of speech, by forcing him to contribute financially to a cause which conflicts with his basic beliefs.[2]

This Court has consistently held that the right to work is liberty and property protected by the Constitution. See e.g. *New State Ice Company* v. *Liebmann*, 285 U.S. 262. It has struck down every arbitrary restriction upon that right. It is only when the police power of a state, reasonably exercised for its general welfare, conflicts with the basic right to work that the latter must give way. *Senn* v. *Tile Layers Protective Union*, 301 U.S. 468. No such conflict here exists.

A union by entering into closed shop contracts becomes quasi-public in character, *James* v. *Marinship Corp.*, 25 Cal. (2d) 721, 155 Pac. (2d) 329 (1944), and may not im-

[2] As the Circuit Court of Appeals for the First Circuit stated in *Santiago* v. *People of Puerto Rico*, 154 F. (2d) 811, 813 (CCA 1, 1946): "Indeed, an employee's right to adhere to the tenets of the political organization of his choice is a basic right in any truly democratic society."

pose arbitrary or unreasonable conditions upon membership—and thus upon the right to work. *Wallace Corporation* v. *National Labor Relations Board*, 323 U.S. 248; 4 Restatement, Torts, Sec. 810. See also the concurring opinion of Mr. Justice Murphy in *Steele* v. *Louisville and National Railway Company*, 323 U.S. 192, 208. The court below held as a matter of law that the enforced contribution here was not an unreasonable condition upon petitioner's continued membership in respondent union. In this respect that court was clearly in error:[3] the condition imposed upon petitioner's continued union membership—and therefore upon his continued right to work—was the forfeiture of his freedom of speech by requiring him to subsidize an agent to combat petitioner's own political beliefs.

The California court stated that petitioner could have adopted other methods of publicizing his own beliefs in support of Proposition No. 12. Thus the court said that petitioner was not "prevented from expressing publicly and privately his own personal views in support of Proposition No. 12" (R. 162); and that the union did not engage "in any political activities to put coercion upon him personally to vote in any particular way or to express himself individually as opposing Proposition No. 12" (R. 162).

Those statements are in direct conflict with the record.[4] Article V of respondent's by-laws was an *in terrorem* threat of expulsion for "any conduct which is prejudicial to the welfare of the local" (R. 29). Furthermore, the resolution adopted by respondent on July 17, 1944, specifically warned each member, including petitioner, that the union would regard his participation in any radio program publicizing the advantages of the proposed amendment as "conduct unbecoming a member" (R. 70). Finally, re-

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[3] See 60 Harv. L. Rev. 834 (1947) for a criticism of the decision of the California District Court of Appeal.

[4] "In a case where it is asserted that a person has been deprived by a State court of a fundamental right secured by the Constitution, an independent examination of the facts by this Court is often required to be made." *Craig* v. *Harney*, 331 U. S. 367.

spondent threatened to expel petitioner if he instituted this action (R. 5).

In any event, the court's reasoning is clearly in conflict with the decisions of this Court construing the first section of the Fourteenth Amendment. Thus, in *Schneider* v. *Irvington*, 308 U.S. 147, 163, where this Court held unconstitutional an ordinance which prohibited the distribution of printed matter in streets and alleys, despite the contention that other public places were available, and said:

> ". . . one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place."

In other words, an individual's right to free speech, as guaranteed by the Constitution, consists of a bundle of rights, the denial of any one of which constitutes a violation of the Fourteenth Amendment.

Accordingly, the question of whether petitioner's suspension was a violation of his freedom of speech is in nowise affected by the assumption that he was free publicly to advocate his own views, or to do other things to combat the effect of the assessment attempted to be extracted from him. If any one stick of the bundle is taken away, petitioner's constitutional right has been abridged, regardless of the number of sticks left in his bundle.

This same principle is inherent in *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, where this Court held that not only verbal or written utterances, but all acts necessary to the expression or dissemination of one's beliefs, are protected by the Fourteenth Amendment. As Mr. Justice Jackson there said, the Bill of Rights which guarantees the individual's right to speak his own mind includes the correlative protection against being compelled to "utter what is not in his mind." That same Bill of Rights protects petitioner, we urge, from being compelled to sponsor, through financial contributions, an utterance of "what is not in his mind." *West Virginia State Board of Education* v. *Barnette*, 319 U.S. 624, 634.

Just as this Court struck down West Virginia's attempt to condition attendance at public school upon the individual's being compelled to speak contrary to his beliefs, through the symbol of the flag salute, so here this Court should strike down California's sanction of respondent's attempt to condition union membership upon petitioner's being compelled to speak contrary to his beliefs, through others subsidized by a forced levy extracted from him. In the *Barnette* case, the individual's alternative was to refrain from attending school—a loss of his right to a free education and to the equal protection of the laws; in the case at bar, petitioner's alternative is the loss of his job—a deprivation of property without due process of law.

The California court laid great emphasis on the fact that opopsition to Proposition No. 12 was a reasonable union objective, and that respondent's own constitution and by-laws [5] constituted the sole restriction upon its activities toward that objective.

But if these were the only relevant considerations, the law would permit many encroachments upon the rights of the individual which this Court has refused to sanction. The true test is rather, as Mr. Justice Black said in *Martin* v. *Struthers*, 319 U.S. 141, 143, the "weighing of conflicting interests" to determine which must give way. See Witmer, *Civil Liberties and the Trade Union* (1941) 50 Yale L.J. 621, 627.

Petitioner does not here contend against the legality [6] of

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[5] Petitioner's suspension—without a hearing—was purportedly accomplished under Section 3 of Article VI, entitled "Initiation Fees and Dues", of the by-laws. Article V, Section 1, however, is entitled "Suspension, Expulsion, Etc." and specifies written charges and a hearing as prerequisites to suspension in cases of members "in any wise indebted to the Local or . . . guilty of . . . conduct which is prejudicial to the welfare of the Local . . .". This language, if significant at all, must be read to include special assessments not within the category of initiation fees and dues.

[6] Petitioner does contend, *infra*, pp. 15-18, that the Federal Corrupt Practices Act outlawed the respondent's contribution and therefore voided the assessment and petitioner's consequent suspension.

the union's use of voluntary contributions [7] in its campaign against Proposition No. 12. But the reasonableness of the union's activity against Proposition No. 12 is by no means of the "substantiality" essential to warrant regulation of freedom of speech by compulsory assessments conditioned on forfeiture of the right to work. *Schneider* v. *Irvington*, 308 U.S. 147, 161. The lawfulness of respondent's duly adopted resolution to fight Proposition No. 12 must give way to petitioner's right not to be compelled, at the risk of losing his job, to speak contrary to his beliefs.

The fact that petitioner was required to subsidize another to speak for him—but contrary to his beliefs—rather than directly compelled, himself, to take the rostrum in opposition to his own beliefs, does not diminish the extent of the encroachment upon petitioner's rights guaranteed by the Federal Constitution. The right so protected is the right to effective speech. *Martin* v. *Struthers, supra.* Clearly the effectiveness of petitioner's free speech was vitally abridged by requiring him—at the risk of losing his job—to contribute to the cost of hiring orators and procuring written material precisely contrary to what petitioner wanted to say and write. Respondent may not, in the words of Mr. Justice Douglas in *Murdock* v. *Pennsylvania*, 319 U.S. 105, 113, "impose a charge for the enjoyment of a right granted by the federal constitution".

The fact that all members of the union were treated alike does not justify the encroachment upon petitioner's rights because, as this Court stated in the *Murdock* case (319 U.S. 105, 115):

> "... equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in a preferred position."

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[7] Even in England, where a labor government is in power, labor unions are prohibited from levying compulsory assessments for political purposes. See Rothschild, *Government Regulation of Trade Unions in Great Britain: II* (1938), 38 Col. L. Rev. 1335.

Nor can respondent justify the encroachment upon the ground that the resolution was duly adopted by a vote of the majority of its members. For, as this Court stated in the *Barnette* case (319 U. S. 624, 638):

> "One's right to life, liberty and property, to free speech, a free press, freedom of worship and assembly and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections."

Petitioner does not here contend that the closed shop is unlawful. But where a labor union controls the right to work in an industry, the courts will not countenance arbitrary and frustrating conditions on membership: the right to work at one's chosen calling is a right protected by the Fourteenth Amendment. Where, as here, such a union imposes a condition upon membership which entails an abridgment of another basic civil right, also protected by the Fourteenth Amendment, a substantial Federal question is presented which calls for determination by this Court.

II.

THE ACTION OF THE CALIFORNIA STATE COURT IN DENYING RELIEF TO PETITIONER CONSTITUTED STATE ACTION WITHIN THE MEANING OF SECTION 1 OF THE FOURTEENTH AMENDMENT.

Action is no less governmental because it is taken by the judicial rather than the legislative or executive branch. *Virginia* v. *Rives*, 100 U.S. 313, 318; *Ex parte Virginia*, 100 U.S. 339, 346-347; *Neal* v. *Delaware*, 103 U.S. 370, 397; *Carter* v. *Texas*, 177 U.S. 442, 447; *Rogers* v. *Alabama*, 192 U.S. 226, 231; *Martin* v. *Texas*, 200 U.S. 316, 319; *Twining* v. *New Jersey*, 211 U.S. 78, 90-91; *Moore* v. *Dempsey*, 261 U.S. 86; *Powell* v. *Alabama*, 287 U.S. 45; *Mooney* v. *Holohan*, 294 U.S. 103; *Brown* v. *Mississippi*, 297 U.S. 278; *Chambers* v. *Florida*, 309 U.S. 227; *Cantwell* v. *Connecticut*, 310 U.S. 296, 307-311; *A.F. of L.* v. *Swing*, 312 U.S. 321,

324-326; *Bridges* v. *California*, 314 U.S. 252; *Bakery Drivers Local* v. *Wohl*, 315 U.S. 769; *Cafeteria Employees Union* v. *Angelos*, 320 U.S. 293, 294; *Pennekamp* v. *Florida*, 328 U.S. 331; *Craig* v. *Harney*, 331 U.S. 367. This was decided in the *Civil Rights Cases*, 109 U.S. 3, 17. This Court held that the Fourteenth Amendment does not prohibit encroachments upon civil rights which are merely "wrongful acts of individuals, unsupported by state authority in the shape of laws, customs, or judicial or executive proceedings".

Judicial action constitutes governmental action even though based upon common-law enforcement of private rights. Thus in *A.F. of L.* v. *Swing*, 321 U.S. 321, 324-326, this Court dissolved an injunction against peaceful picketing as an unconstitutional violation of rights secured by the Fourteenth Amendment. Accord: *Bakery Drivers Local* v. *Wohl*, 315 U.S. 769; *Cafeteria Employees Union* v. *Angelos*, 320 U.S. 293. Compare *Schenectady Union Publishing Co.* v. *Sweeney*, 316 U.S. 642, where it was contended that a judgment for damages in a libel suit infringed on the freedom of speech secured by the Fourteenth Amendment, and this Court, equally divided, affirmed. In *Bridges* v. *California*, 314 U.S. 252, this Court set aside a conviction of contempt of court on the ground that defendants' freedom of speech had been abridged. Mr. Justice Black there pointed out that in the absence of a statute declarative of a state's policy as to the circumstances which might justify abridgment of a particular civil liberty, this Court would itself determine whether the challenged abridgment was justified.

The mere fact that the State of California has sanctioned encroachments upon the civil rights of an individual through its judicial rather than its legislative branch does not render the Fourteenth Amendment inapplicable. This Court has recently granted certiorari in the group of cases challenging the validity of restrictive racial covenants between individuals. *Shelley* v. *Kraemer*, 331 U.S. 803; *McGhee* v. *Sipes*, 331 U.S. 804; *Hurd* v. *Hodge*, 332 U.S.— (No.

290, present Term, cert. granted October 20, 1947); *Urcilio* v. *Hodge,* 332 U.S.— (No. 291, present Term, cert. granted October 20, 1947).

No distinction can properly be made as to whether the judicial action challenged on constitutional grounds is affirmative or negative. *Brinkerhoff-Faris Trust & Savings Company* v. *Hill,* 281 U.S. 673; *conf. Schenectady Union Publishing Co.* v. *Sweeney,* 316 U.S. 642. The abridgment of a civil right or the deprivation of a property right is nonetheless real or harmful whether the judgment in a particular case impinges upon the plaintiff by denying relief or upon the defendant by granting relief.

In any event we respectfully urge that the "governmental action" requirement for review by this Court of instances of deprivation of and encroachment upon the basic civil liberties is either met in the case at bar or should be relaxed to the extent necessary to grant relief here.

III.

THE FEDERAL CORRUPT PRACTICES ACT PROHIBITED THE CONTRIBUTION BY RESPONDENT UNION FOR THE EXPRESS PURPOSE OF DEFEATING PROPOSITION NO. 12 AT THE POLLS, AND THE ASSESSMENT AND RESULTANT SUSPENSION OF PETITIONER WERE THEREFORE VOID.

Section 251 of the Federal Corrupt Practices Act makes it "unlawful for . . . any labor organization to make a contribution in connection with any election at which Presidential and Vice Presidential electors, or a Senator or Representative in . . . Congress are to be voted for . . ." (2 U.S.C. Sec. 251, as amended June 25, 1943).

The Court below expressly assumed that the assessment and consequent suspension of petitioner would be void if the union's contribution to defeat Proposition No. 12 were contrary to the Act. If the assessment was for an unlawful purpose, the suspension of petitioner and his consequent

loss of his job constituted a violation of the Fourteenth Amendment. But the court construed the Act to prevent contributions by labor unions only "in respect to Federal elective office" (R. 170). The court stated further that the Federal act did not express an intent to regulate "state legislative matters appearing on the ballot" (R. 170).

It seems clear that respondent union levied the assessment for the purpose of making "a contribution in connection with" [8] an election. The stated purpose of the assessment was "to finance the campaign in opposition to Proposition No. 12".

Proposition No. 12 was on the ballot at an election at which there were candidates for Presidential and Vice Presidential electors, a United States Senator and Representatives to the Federal Congress (R. 93, 150). Furthermore, as this Court judicially knows (*Mills* v. *Greene*, 159 U.S. 651), Proposition No. 12 was an important issue at this election; several candidates for Federal office received the open support of organized labor.[9]

Clearly the union's contribution was "in connection with" an election of Federal officers, and therefore falls within the literal interdiction of the statute.

It was plainly the Congressional intent to prohibit labor organizations from using financial contributions to influence any election at which specified Federal officials were to be chosen. *United States* v. *United States Brewers' Assn.*, 239 Fed. 163 (W.D. Pa. 1916). By its use of the

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[8] *United States* v. *United States Brewers' Assn.*, 239 Fed. 163, 169 (W. D. Pa. 1916.)

[9] See statement of A. F. of L. spokesman under heading "PAC INQUIRY," etc. in *San Francisco Chronicle*, October 26, 1944. See also article dealing with Congressional Candidate Miller, *San Francisco Chronicle*, November 1, 1944; and article in *Los Angeles Times*, Nov. 1, 1944 wherein a compulsory assessment by the A. F. of L. Screen Office Guild to oppose Proposition No. 12 was described, and where it was charged that the money was to be used to support a political candidate.

words "in connection with any election" Congress evidenced its purpose to impose the prohibition regardless of the fact that state officials or state measures were likewise on the ballot. The effectuation of this purpose was within its power. *Ex parte Yarbrough,* 110 U.S. 651; *Ex parte Siebold,* 100 U.S. 371; *Ex parte Clark,* 100 U.S. 399; *Ex parte Coy,* 127 U.S. 731.

The absence of any limitation to the contrary indicates the further legislative purpose to prohibit all efforts, both direct and indirect, to influence the election of Federal officials. Just as the Act prohibits any contribution directly for or against a particular political candidate for Federal office, so it prohibits any contribution in connection with a political measure which forms a part of that candidate's campaign platform. Furthermore, contributions to defeat a political measure by an organization which supports a candidate running for Federal office on the same ballot, is in effect a contribution by that organization to influence the election of that Federal official.

Since the union's control of radio performers in nationwide, an analogous situation is presented by Section 12 (h) of the Public Utility Holding Company Act of 1935 (15 U.S.C. Sec. 79 l (h)) which prohibits contributions in connection with any election or to any political party. In *Egan* v. *United States,* 137 Fed. (2d) 369, 375 (CCA 8, 1943) the Court rejected defendant's challenge of the Act as an attempt by the Federal Government to regulate state elections, saying:

> "Considering the evil effect of political contributions, as determined by Congress, and sought to be eliminated by means of Section 12(h) of the Act, we think the prohibition of such contributions, whether made to candidates for federal or non-federal offices, whether to national or local parties or committees, or whether by use of the mails or by means or instrumentalities of interstate commerce, 'or otherwise', by public utility holding companies, is within the power of Congress."

Respondent's contribution to defeat Proposition No. 12 was clearly "a contribution in connection with" an election of Federal officers. The contribution was thus prohibited by the Act. The assessment was therefore void and petitioner has been arbitrarily deprived of his right to work in violation of the Fourteenth Amendment.

CONCLUSION.

WHEREFORE, it is respectfully requested that this petition for a writ of certiorari to the Supreme Court of California be granted.

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March 16, 1948.

APPENDIX.

The Federal Corrupt Practices Act (2 U.S.C. Sec. 251, as amended June 25, 1943, c. 144 § 9, 57 Stat. 167).

"Sec. 251. *Political contributions by national banks, corporations, or labor organizations; penalty.*

It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, to make a contribution in connection with any election to any political officer, or for any corporation whatever, or any labor organization to make a contribution in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section 'labor organization' shall have the same meaning as under Sec. 151-166 of Title 29."